# Glacier Bay National Park & Preserve Questions & Answers Concerning the Concession Prospectus for Cruise Ship Services (Solicitation GLBA-CRUISESHIP-08) July 16, 2008

Following are statements and questions the National Park Service (NPS) received concerning the subject prospectus, as well as the NPS responses.

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#### **Statement/Question 1:**

The prospectus and related solicitation materials specify that the minimum franchise fee for the new contract is the greater of \$7.00 per passenger per day or \$500.00 (to be adjusted annually in accordance with the Consumer Price Index after the first year of the new contract). The solicitation materials further state that offerors may propose a higher franchise fee in accordance with the terms of the prospectus, and the prospectus itself specifically states that the proposal of a higher franchise fee may result in a higher score under principal selection factor 5. Proposal Package at 24; Business Opportunity at 8-9.

[a.] Please reconcile this franchise fee requirement with 16 U.S.C. § 1a-2(g), which provides:

Fees paid by certain permittees for the privilege of entering into Glacier Bay shall not exceed \$5 per passenger. For the purposes of this subsection, "certain permittee" shall mean a permittee which provides overnight accommodations for at least 500 passengers for an itinerary of at least 3 nights, and "permittee" shall mean a concessionaire providing visitor services within Glacier Bay.

This provision was cited in the Park Service's October 2006 Report to Congress on the Concessions Program ("An Analysis of the Concessions Program and an Assessment of Concession Contract Competitiveness and Program Administration as a Result of Enactment of Public Law 105-391"), at page 4. That Report specifically noted with respect to Glacier Bay that "Franchise fees for cruise ship services, which account for approximately 90 percent of the vessel services, are capped at \$5 per passenger by Public Law 104-333."

It may be worthwhile to note that footnote 11 of the Business Opportunity states that "The franchise fee is established for all offerors in accordance with Public Law 104-333, Title IV (National Park Service Concession Management Improvement Act of 1998) and all offerors may propose a higher franchise fee in accordance with this law and the terms of this prospectus." Business Opportunity at 9 n.11. Although Public Law 104-333 is not the correct cite to the Concessions Management Improvement Act of 1998 (Pub. L. No. 105-391), it is the source of the 16 U.S.C. § 1a-2(g) franchise fee limitation for certain Glacier Bay cruise ship entries quoted above. Omnibus Parks and Public Lands Management Act of 1996, Pub. L. No. 104-333, Sec. 703 (1996).

**[b.]** Please also indicate how the National Park Service will score principal selection factor 5 in light of the Service's response to this question.

#### NPS Answer 1:

[a.] "Reconcile the franchise fee requirement with 16 U.S.C. § 1a-2(g)"

The submitter is correct in noting that the citation in footnote 11 is incorrect. The citation should have been "Public Law 105-391." Footnote 11 should read: "The franchise fee is established for all offerors in

accordance with Public Law 105-391, Title IV (National Park Service Concession Management Improvement Act of 1998) and all offerors may propose a higher franchise fee in accordance with this law and the terms of this prospectus."

The NPS has determined that the franchise fee and solicitation process as provided in the prospectus are lawful and consistent with applicable law.

The 2006 report to Congress, referenced by the submitter, correctly noted that the franchise fees in the existing contracts are capped at \$5 per passenger. The existing contracts were issued pursuant to a prospectus issued on February 19, 1998. Section 419 of Public Law 105-391 specifically provided that the award of the contracts pursuant to the 1998 prospectus shall be under provisions of existing law at the time the 1998 prospectus was issued. Public Law 105-391 was not in existence when the prospectus was issued on February 19, 1998.

# [b.] "Indicate how the National Park Service will score principal selection factor 5 in light of the Service's response to this question."

The NPS will score principal selection factor 5 in accordance with 36 CFR 51.16(a), as follows:

"(a) The Director will apply the selection factors set forth in § 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. The first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus)."

Each of the selection factors in the prospectus, proposal package, have the range of possible scores listed following the title of the selection factor. In total, the selection factors have a maximum possible score of 30 points for this prospectus.

#### **Statement/Question 2:**

The prospectus and related solicitation materials request offeror's provide a report of "Marine Casualties or Accidents" for a period of five years prior to the submission of the proposal. NPS footnotes this definition with an (8) part definition of a "marine casualty or accident" and a reference to the applicable 46 CFR Part 4.

The definition provided in footnote (18) indicates- "The term "marine casualty or accident" means any event (anywhere in the world) caused by or involving a passenger vessel and includes the following: .... "

[a.] Please reconcile the definition provided in the prospectus with 46 CFR Part 4, which seems to indicate that the definition only applies to U.S. navigable waters:

#### § 4.03-1 Marine casualty or accident.

Marine casualty or accident means—

- (a) Any casualty or accident involving any vessel other than a public vessel that—
- (1) Occurs upon the navigable waters of the United States, its territories or possessions;
- (2) Involves any United States vessel wherever such casualty or accident occurs; or
- (3) With respect to a foreign tank vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), involves significant harm to the environment or material damage affecting the seaworthiness or efficiency of the vessel.

.... [the rest of the text is omitted for space]

Along the same lines, the definition provided in footnote (18), sub-item 8) outlines a definition of "an occurrence causing significant harm to the environment including:

- 1) An occurrence involving significant harm to the environment including:
  - a) A discharge of oil as set forth in 40 CFR 110.3 or a discharge of hazardous substances in quantities equal to or exceeding, in any 24-hour period, the reportable quantity determined in 40 CFR part 117;
  - b) A discharge of noxious liquid substances [as defined in 33 CFR 151.47 or 33 CFR 151.49] in bulk; and
  - c) A probable discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances. "

While the applicable 46 CFR Part 4 indicates the definition applies only in US navigable waters.

§ 4.03-65 Significant harm to the environment. Significant harm to the environment means—

- (a) In the navigable waters of the United States, a discharge of oil as set forth in 40 CFR 110.3 or a discharge of hazardous substances in quantities equal to or exceeding, in any 24-hour period, the reportable quantity determined in 40 CFR part 117;
- (b) In other waters subject to the jurisdiction of the United States, including the EEZ—
- (1) A discharge of oil in excess of the quantities or instantaneous rate permitted in 33 CFR 151.10 or 151.13 during operation of the ship; or
- (2) A discharge of noxious liquid substances in bulk in violation of §§153.1126 or 153.1128 of this chapter during the operation of the ship; and
- (c) In waters subject to the jurisdiction of the United States, including the EEZ, a probable discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances. The factors you must consider to determine whether a discharge is probable include, but are not limited to— .......... [the rest of the text is omitted for space]

In the interest of making sure that Offeror's provide exactly the right information requested by the Park Service, please reconcile the apparent difference in definition. The scope of the request in the prospectus *appears* to be greater than that required by the 46 Part 4 CFR cited as the authority.

#### NPS Answer 2:

[a.] "Please reconcile the definition provided in the prospectus with 46 CFR Part 4, which seems to indicate that the definition only applies to U.S. navigable waters."

Offerors must list all marine casualties or accidents which occurred anywhere in the world, not just U.S. navigable waters, including discharge or probable discharge of oil and noxious liquid substances. The inclusion of the 46 CFR Part 4 citation did not limit the scope of information requested.

#### **Statement/Question 3:**

[a.] If we were to get the permits, can you advise if we did not use them the first year that we simply turn them back in for others to use? [b.] If so do we keep them the following years? [c.] If so would they always be on a specific day or are the days transferable in subsequent years?

#### NPS Answer 3:

[a.] See the Draft Contract, Exhibit B – Operating Plan (page 6). "6. Reallocation of use days" and "7 Loss of Use Day Allocation". Each concession contract will include an allocation of "use days." Concessioners who will not use any of their allocation of use should advise the Park Superintendent as early as possible. Relinquished use days will be made available to other cruise ship concessioners as described in the draft operating plan.

**[b.]** See the Proposal Package (page 5), 'Number of "Prime Season" Use Days Requested', and the Draft Contract, Exhibit B – Operating Plan (page 6) 'Loss of Use Day Allocation', section F, conditions 7 and 8, which state:

"failure to use any prime season use days allocated during the first year of the contract term may result in reallocation of those use days at the discretion of the Superintendent."

Depending on the circumstances, the concessioner could lose use days for the remainder of the contract term which have been allocated to the concessioner, but which were not used during the first year of the contract. This provision is designed to discourage offerors from submitting proposals for services which they are unable or do not currently plan to provide. Use days for the remainder of the contract term may not be reallocated if the offeror clearly stated in their proposal their proposed schedule of use. For example, if an offeror did not plan to provide Cruise Ship Services in Glacier Bay until 2012, the offeror should state in their proposal, under the Proposal Package, 'Number of "Prime Season" Use Days Requested' section, that if they are awarded a concession contract, they would immediately relinquish their use days for 2010 and 2011.

[c.] See the Draft Contract, Exhibit B – Operating Plan (pages 5 & 6), "F. Glacier Bay Vessel Use Day Allocation and Scheduling" for a description of the process used for scheduling use days if schedules submitted result in more than two cruise ships scheduled on any day in Glacier Bay Proper.

#### **Statement/Question 4**

Is providing the [entity name deleted] financial statements sufficient since [entity name deleted], as a wholly owned subsidiary, does not produce a consolidated financial statement?

#### NPS Answer 4:

See the Proposal Package, Principal Factor 4, Financial Position of the Offeror (page 20), which provides:

"If the offeror is a subsidiary of another company, also provide financial statements for all parent companies."

"Note: If the information requested above is not available, the offeror should explain why and provide information demonstrating the offeror's financial position. If the offeror is a new entity with no financial history, then the offeror should provide information demonstrating the financial position of the new entity. This could include, but is not limited to, binding commitments from investors, shareholders or other owners to provide financial support. In this case, financial statements demonstrating availability of funds for the investors, shareholders or other owners should also be provided."

# **Statement/Ouestion 5**

Assuming we will have AWTS [advanced waste-water treatment system] aboard in 2011, can treated effluent from an approved AWTS be discharged into the Bay? This is not exactly clear in the NPS permit or in the draft EPA NPDES permit. If anything, it appears the draft EPA NPDES permit allows suitably treated effluent to be discharged, as long as the ship is at least 1NM from shore.

# NPS Answer 5:

Existing State and federal regulations apply to discharges in Glacier Bay. The draft contract contained in the prospectus does not modify the State and federal regulations. The introduction to Principal Selection Factor 1 provides, "A primary objective of the National Park Service is the protection of park resources. Some potential environmental issues related to cruise ship services include: ... Water quality issues due to discharge of waste, toxicity of anti-fouling systems and petroleum spills;"

The Proposal Package, [Subfactor 1b. "Water Quality," page 10 of 26], provides 1) a better proposal may commit to eliminating vessel discharge in all Glacier Bay National Park waters and 2) waters adjacent to Glacier Bay National Park from Cross Sound to the entrance to Glacier Bay.

Element 3) of Subfactor 1b provides:

"If the proposed operation involves any wastewater discharge into park waters, identify any wastewater treatment you will use which exceeds state or federal requirements. A better proposal (though likely not better than a commitment to eliminate discharge) may employ an advanced wastewater treatment system designed to remove the highest proportion of pathogens, pollutants, metals and organics."

Proposal Instructions at page 7 of 8 provides:

ADDITIONAL TERMS AND CONDITIONS

NPS may include as terms of the final concession contract appropriate elements of the proposal selected for award of the concession contract. Do not make proposal commitments that you are not prepared to fulfill.

# **Statement/Question 6:**

When will our application become part of public record?

#### NPS Answer 6:

See 36 CFR 51.100 "When will the Director make proposals and evaluation documents publicly available?

"In the interest of enhancing competition for concession contracts, the Director will not make publicly available proposals submitted in response to a prospectus or documents generated by the Director in evaluating such proposals, until the date that the new concession contract solicited by the prospectus is awarded. At that time, the Director may or will make the proposals and documents publicly available in accordance with applicable law."

A website reference to the NPS Concession Management Regulations, 36 CFR Part 51, is provided in the Business Opportunity section of the prospectus, page 10.

# **Statement/Question 7:**

How is the public record accessible? Is it available online, or would someone need to make a formal request to have access to the information?

#### NPS Answer 7:

The National Park Service provides information to the public in a number of ways including in response to requests submitted pursuant to the Freedom of Information Act. Information may be provided as copies of documents in their original format or by posting information of general interest on the Park's web site.

# **Statement/Question 8:**

How will we know if the information we marked as "trade secrets" is being kept out of the public record?

#### **NPS Answer 8:**

As noted on page 2 of the Proposal Instructions information identified as provided in the Proposal Instructions will not be made public by NPS except in accordance with law. In determining whether a particular law requires release, we will comply with the following guidance.

"In accordance with Executive Order 12,600, Predisclosure Notification Procedures for Confidential Commercial Information, June 23, 1987, or superseding Executive order, and 43 CFR 2.23, bureaus will notify submitters when their data is requested under the FOIA to determine if the material is confidential and exempt from disclosure (see paragraph 3.23 of Chapter 3). That notice must give submitters a reasonable amount of time to comment on the proposed release before the bureau releases the information." [DOI, FOIA Handbook, Section 5.6 F (http://www.doi.gov/foia/handbook\_2004.pdf)]

# **Statement/Question 9:**

Will we be notified in some way?

#### NPS Answer 9

Yes. See NPS Answer 8, above.

#### **Statement/Ouestion 10:**

If we indicate our proposal contains trade secrets and confidential information will any section of the proposal be available to the public under the freedom of information act?

#### NPS Answer 10:

Pages that are not marked as indicated in the Proposal Instructions, Public Availability of Proposals, page 2 of 8, may be released to the public. In addition, as noted in NPS Answer 8, above, information will be made available in accordance with law regardless of how it is marked.

#### **Statement/Ouestion 11:**

Will the fact we have submitted a proposal be available under the freedom of information act?

# NPS Answer 11:

Yes. The National Park Service releases names and addresses of offerors.

### **Statement/Question 12:**

Does the Franchise fee include the cost recovery expense for the provided Interpretive Program or is this an additional fee?

#### NPS Answer 12:

No. The NPS Interpretive Program costs are not included in the franchise fee.

### **Statement/Question 13:**

If not what is the current cost of this?

#### NPS Answer 13:

The NPS Interpretive Program costs for 2008 are estimated to be \$1.28 per passenger. The 2007 costs were \$1.15 per passenger.

# **Statement/Question 14:**

Can we access questions and answers from previous years?

#### NPS Answer 14:

There is no record of the receipt of any questions in response to the previous solicitation in 1998.

#### **Statement/Question 15:**

Can we have access to previous applications as an example of application?

#### NPS Answer 15:

Redacted proposals submitted in response to the 1998 Prospectus are available on the park's website at: <a href="http://www.nps.gov/glba/parkmgmt/glba-cs-admin-record.htm">http://www.nps.gov/glba/parkmgmt/glba-cs-admin-record.htm</a>. Offerors should note that the statutes and federal regulations related to the solicitation, award and administration of National Park Service concession contracts have changed significantly since the 1998 prospectus was issued. The current prospectus is different than the 1998 prospectus in content and format.

# **Statement/Question 16:**

There is no specific line for passenger ticket revenue in the "Prospective Income Statement Format" document. Should the revenue be included as "Other" or is it the intent that such information be omitted from the income statement?

#### NPS Answer 16:

Offerors should report all passenger ticket revenue on the Prospective Income Statement under "Gross Receipts", "Tours".

#### **Statement/Question 17:**

We do not have audited financials for the company which will be applying for the concession permit, but do have audited financials/SEC filings for the ultimate parent/holding company of the proposed permit holder. Is it acceptable to provide the financials for the ultimate parent to comply with requirement 1.1 of Principal Factor 4.

# NPS Answer 17:

See question and answer #4.